

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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IAN S. PHILLIPS, )  
Plaintiff, )  
v. ) C.A. No. 05-742 (SLR)  
MERRILL LYNCH PIERCE FENNER, ) JURY TRIAL DEMANDED  
& SMITH INCORPORATED, )  
Defendant. )  
\_\_\_\_\_  
)

**DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6),  
OR TRANSFER VENUE PURSUANT TO 28 U.S.C.A. § 1404(a)**

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), hereby moves to dismiss the Complaint filed in the above-captioned action pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, moves to transfer this case to the District of Connecticut, pursuant to 28 U.S.C.A. § 1404(a). As grounds for this motion, Merrill Lynch refers to its Opening Brief and Affidavit of Judy Monaghan, filed contemporaneously herewith.

**DUANE MORRIS LLP**

/s/ Daniel V. Folt

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Dated: December 29, 2005

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**CERTIFICATE OF SERVICE**

I, Gary W. Lipkin, hereby certify that on December 29, 2005, I caused to be served a copy of "Defendant's Motion To Dismiss Pursuant To Rule 12(b)(6), Or Transfer Venue Pursuant To 28 U.S.C.A. § 1404(a)" on the following counsel of record via e-filing:

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/s/ Gary W. Lipkin (DE Bar I.D. No. 4044)